

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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| STATE OF TENNESSEE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. _____ |
| |) | |
| BRIDGESTONE/FIRESTONE, INC., |) | |
| an Ohio corporation with its principal |) | |
| place of business in Nashville, Tennessee |) | |
| |) | |
| Defendant, |) | |

VERIFIED COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through Paul G. Summers, the Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, at the request of David A. McCollum, the Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (the "Division"). The Division has reason to believe that the Defendant named herein has violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et. seq.*, and that this action is in the public interest.

The Attorney General brings this civil action regarding certain tires manufactured by Bridgestone/Firestone, Inc., and to protect consumers from any misrepresentations or omissions of material facts regarding any of Defendant's tires in the future. The tires for which the Attorney General seeks relief include: (1) tires covered by the voluntary recall announced by Defendant in August of 2000 ("First Recall"). The tires included in the First Recall, include all P235/75 R15 Firestone Radial ATX, all P235/75 R15 Firestone Radial ATXII, and the P235/75 R15 Firestone Wilderness AT tires which were manufactured at the Defendant's Decatur, Illinois plant. (2) The tires included in the Customer Satisfaction Program announced by Defendant on September 12, 2000. A list of the tires involved in that program is attached as

Exhibit A. (3) The tires included in the second recall (“Second Recall”) announced on October 4, 2001 are all Firestone Wilderness AT tires in the P235/75R15 and P255/70R16 sizes which were produced before May 1998 and used as original equipment on Ford Explorers and Mercury Mountaineers for model years 1995 through 1998. The tires involved in the First Recall, Second Recall, and the Customer Satisfaction Program are hereinafter referred to as the “Defined Tires.” This Complaint only covers issues associated with Defined Tires. Nothing herein shall be construed to indicate that the State has raised claims broader in scope than the Defined Tires.

Most of these tires were replaced by Defendant or others such as vehicle manufacturers after the Attorneys General Multi-state Working Group began expressing its concerns to Defendant beginning in August 2000.

The Attorney General is the chief civil law enforcement officer in the State. He has the unique responsibility to protect the public interest of Tennessee’s consumers from misrepresentations, omissions of facts and other safety hazards which impact Tennessee. He also has a unique enforcement role over businesses located within the State of Tennessee that operate or manufacture goods for distribution and use throughout the country from this state. It is in this critical role that the Attorney General commences this lawsuit against Bridgestone/Firestone, Inc.

I. JURISDICTION AND VENUE

1. The State of Tennessee invokes the jurisdiction of this Court pursuant to the provisions of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County, pursuant to the provisions of Tenn. Code Ann. § 47-18-108(a)(3), because it is a county in which Defendant has conducted business. An Affidavit and Verification of David A. McCollum, Director, Division of Consumer Affairs, Department of Commerce and Insurance, is attached hereto as Exhibit B and incorporated by reference in this Verified Complaint.

II. PARTIES

2. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by the Attorney General on behalf of and

at the request of the Division. (See Exhibit B.)

3. Defendant Bridgestone/Firestone, Inc., is a corporation organized under the laws of the State of Ohio, with its principal place of business in Nashville, Tennessee.

III. FACTUAL ALLEGATIONS

Upon information and belief, the State of Tennessee alleges as follows:

Defendant's business

4. From the time of its formation in 1900 through the present, the Firestone Tire and Rubber Company and/or Bridgestone/Firestone, Inc., has been engaged in the consumer retail and wholesale business, and has transacted commerce from its tire manufacturing plants in LaVergne and McMinnville, Tennessee, its corporate headquarters located in Davidson County, Tennessee, and its many stores and establishments located throughout the State of Tennessee, including several stores in Davidson County, Tennessee. Bridgestone/Firestone, Inc. engages in the business of manufacturing automotive tires, and supplying tires, parts and services to consumers and other persons as defined in Tenn. Code Ann. §§ 47-18-103(2) and (9) (hereinafter "consumers" or "consumer"). Defendant was engaged in this business at all times relevant to this complaint.

5. Some consumers purchase Defendant's tires through stores owned by Defendant or by independently owned dealers. Other consumers purchase Defendant's tires from motor vehicle dealers as original equipment in connection with the purchase of a new motor vehicle. In addition, motor vehicle manufacturers purchase Defendant's tires directly from Defendant for use as original equipment to be sold to the public with new motor vehicles.

Failure to Disclose Foreign Silent Warranty

6. By at least 1997, Defendant agreed to a manufacturer's customer notification enhancement action regarding a subset of Defined Tires overseas, but made no disclosure of either the defects or the overseas notification program to consumers in the United States. As part of this program, the tires, including some of the Defined Tires, were replaced because of an alleged safety related defect. These tires had been and continued to be sold in the United States.

General Non-Disclosure of Safety Risks

7. Beginning in 1990, Defendant sold to consumers certain Defined Tires which it had manufactured for use on sport utility vehicles. Defendant did not disclose to consumers, or request that manufacturers of, or dealers in, new vehicles equipped by the manufacturer with these tires as original equipment disclose to consumers, that under the advertised conditions the Defined Tires had a higher risk of tire failure.

Voluntary Safety Recall Reimbursement Program

8. On August 9, 2000, the National Highway Traffic Safety Administration (NHTSA) announced that it had found safety-related defects in the tires involved in the First Recall.

9. On August 9, 2000, Defendant, in conjunction with the National Highway Traffic Safety Administration announced a Voluntary Safety Tire Recall Reimbursement Program. This announcement was the first disclosure by Defendant to the public that the following subgroup of Defined Tires should be removed from vehicles. This group of tires included the Firestone Radial ATX, the Firestone Radial ATXII, and the Firestone Wilderness AT in the P235/75 R15 size which were manufactured at the defendant's Decatur, Illinois plant. Up until this time, Defendant maintained publicly that this subgroup of Defined Tires were safe to use on any appropriate vehicle.

Attorneys General Multistate Working Group

10. Beginning in August 2000, the Office of the Attorney General and the Division of Consumer Affairs received information from consumers to the effect that Defendant and its agents were violating the Consumer Protection Act and that certain aspects of the recall were leading to undisclosed risks to consumer safety. As a result of this information, the Attorney General joined other State Attorneys General and various consumer agencies in a Multi-state Working Group to evaluate this information and to make the States' concerns known to Defendant.

Bounty program

11. In or about September 2000, the Multi-state Working Group expressed

concern that unsafe recalled tires (a subgroup of the Defined Tires) were being re-sold to unsuspecting consumers by unscrupulous third parties. On September 21, 2000, Defendant announced a “bounty program” to pay ten dollars (\$10.00) per recalled tire (a subgroup of the Defined Tires) in order to ensure all such tires were removed from the stream of commerce.

NHTSA Consumer Advisory

12. On September 1, 2000, NHTSA expressed concern about the possible safety risks associated with certain tires manufactured by Defendant not involved in the Voluntary Recall announced on August 9, 2000. NHTSA issued a consumer advisory to inform consumers that certain tires had tread separation rates exceeding those of the August 9, 2000 recall tires, sometimes by a large margin.

Customer Satisfaction Program

13. On September 12, 2000, Defendant announced a Customer Satisfaction Program which included the Consumer Advisory tires. This announcement was the first time Defendant publicly disclosed that this subgroup of Defined Tires should be removed from vehicles. Defendant refused to initiate a voluntary recall of these tires despite NHTSA’s request to do so.

14. Under the customer satisfaction program, Defendant agreed to replace the consumer advisory tires or reimburse a consumer up to \$140.00 per tire for the purchase of new tires, only if requested to do so by a consumer who owned a Consumer Advisory tire.

Second Recall

15. On October 4, 2001, NHTSA made an initial decision that a defect related to motor vehicle safety existed in Firestone Wilderness AT tires in sizes P235/75 R15 and P255/70 R16 which were manufactured before May 1998 to the vehicle manufacturer’s specifications, and that were installed as original equipment on certain sport utility vehicles.

16. On October 4, 2001, Defendant announced a voluntary recall program (Second Recall) to replace the tires identified in NHTSA’s decision of the same date. This announcement was the first time Defendant publicly disclosed that these tires should be removed from certain vehicles for safety reasons. The subject tires were the Firestone

Wilderness AT tires in the P235/75 R15 and P255/70 R16 sizes which were produced before May 1998 and used as original equipment on Ford Explorers and Mercury Mountaineers for model years 1995 through 1998.

Specific Misrepresentations to consumers

Suitability for Intended Use

17. Defendant, motor vehicle manufacturers, and dealers which sold the Defined Tires publicly advertised to consumers that the Defined Tires were suitable and intended for use on sport utility vehicles under fully loaded highway and off-road conditions at the inflation pressure of twenty-six pounds per square inch. Before and during the time of these representations, Defendant knew or should have known that neither it nor the vehicle manufacturer possessed competent and reliable scientific evidence to substantiate the suitability for use of these Defined Tires under the advertised conditions.

Length of Wear or Durability

18. Defendant, and the motor vehicle manufacturers and dealers which sold the Defined Tires, publicly advertised to consumers that the Defined Tires would have “long, even tread wear” or “long, even wear” under the intended conditions of use. Before and during the time these representations were made, Defendant knew or should have known that neither it nor the vehicle manufacturer possessed competent and scientific evidence to substantiate these claims.

Mode of Failure

19. Defendant, and the motor vehicle manufacturers and dealers which sold the Defined Tires, implied that the normal end of useful life for the Defined Tires would be upon exhaustion of the tread down to the legal minimum, when Defendant knew or should have known that there was an unreasonable risk that the Defined Tires would experience structural failure of components, including but not limited to belts and wedges, before the tread was exhausted.

Mileage warranties

20. The Defendant:

- (A) warranted to consumers that the Defined Tires, if used under the intended conditions, would last for a particular mileage or time frame, or the consumer would have the tire replaced with an equivalent tire or adjusted based on the amount of tread life used if the tire becomes unusable. In some cases, Defendant and its agents failed to provide consumers with an equivalent tire when the Defined Tires failed under the mileage warranty.
- (B) retroactively changed the terms of existing tire warranties for Defined Tires, representing that the warranties had been “expanded” despite reduction in certain terms of coverage; and,
- (C) replaced Defined Tires with tires which were not “equivalent” to the warranted tire under the terms of the consumer’s warranty and failed to reimburse the consumer with the monetary difference in value.

Consumer Protection Violations in connection with Recall and Customer Satisfaction Program

21. In conjunction with the August 2000 Voluntary Safety Recall Reimbursement Program, Defendant announced that it was manufacturing specific replacement tires to be used in replacing the recalled tires (a subgroup of the Defined Tires). Defendant and its agents failed to comply with the terms of the announced Recall program as to all consumers, and gave consumers incorrect, confusing or misleading information regarding the availability of program replacement tires and the costs associated with obtaining such tires. Specifically, Defendant and its agents took the following actions:

- (A) charged some consumers for installation of recall program replacement tires or for the recall program tires themselves;
- (B) communicated to some consumers that program replacement tires were unavailable and that the consumer would either have to wait for recall program replacement tires, or pay to upgrade to a more expensive tire, when in fact a program replacement tire was available;
- (C) charged some consumers for road hazard warranties on replacement tires even though the consumer had purchased the road hazard warranty on the recalled tires; and,
- (D) replaced recalled tires with non-program replacement tires which were not “equivalent” to the recalled tires under the terms of the warranty and recalls and failed to reimburse the consumer with the monetary difference in value.

These practices were not consistent with the terms of the Defined Tire’s warranty and the Voluntary Safety Recall Reimbursement Program as announced and promoted by Defendant publicly and privately to consumers.

22. As part of its recall program, Defendant and its agents announced publicly to

consumers that Defendant had retained an independent expert to conduct an independent analysis of incidents involving tires affected by the recall and promoted that “We are taking this step because we are committed to finding out what, if any, problems may have led to the incidents involving the affected tires”. The Defendant also stated that they would rely on the independent expert to examine and verify its own internal investigation process. However, Defendant failed to provide all requested information to the independent expert, and failed to publicly inform consumers that it had failed to do so.

Silent Warranty

23. Defendant engaged in a silent warranty on a subgroup of Defined Tires when the Defendant and/or its agents instructed consumers who owned Defined Tires to bring in their vehicles for a non-tire related purpose when in fact the purpose was to enable Defendant’s agents to inspect tires and determine whether they should be replaced.

Manufacture and Distribution of Defined Tires

24. Defendant has ceased manufacturing and distributing the Defined Tires as either original equipment tires or replacement market tires.

Restitution to consumers

25. Defendant has made restitution to a number of consumers through its publicly announced recall and customer satisfaction programs. However, a number of other consumers have been unjustly denied restitution despite having purchased one of the Defined Tires and having made a claim to Defendant. Further, Defendant in some cases failed to inform consumers of their right to appeal a denial of restitution.

IV. VIOLATIONS OF LAW

26. The State of Tennessee re-alleges all preceding paragraphs of this Verified Complaint, and incorporates them herein.

27. Defendant has violated the Tennessee Consumer Protection Act of 1977, §§ 47-18-101, *et seq.*, by engaging in various unfair, misleading or deceptive acts or practices, including, but not limited to:

(A) failing to clearly and conspicuously disclose prior to purchase all material and

necessary safety disclosures associated with the use of the Defined Tires in a manner designed to arrest the eye or attract the attention of the average purchaser of the product, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5) and (b)(27);

- (B) providing consumers with inconsistent warning labels or instructions (such as but not limited to inconsistent tire pressure information) for the Defined Tires, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5) and (b)(27);
- (C) promoting Defendant's Defined Tires as appropriate for use off road by using such statements as "For on and off-road driving", "outstanding off-road capability", and "Hunting, fishing, or camping --wherever you're going, these rough aggressive tires can take you there. Deep tread designs and steel belted construction give you the traction and impact resistance you need on remote back roads" but later disallowing warranty claims because of "consumer abuse" associated with off road use or punctures, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(7), (b)(12), (b)(19) and (b)(27);
- (D) failing to clearly and conspicuously disclose that Defendant's Defined Tires were defective, in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);
- (E) selling Defined Tires which are defective without clear and conspicuous disclosure of that fact, in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);
- (F) marketing the Defined Tires for particular use when the tires present a risk of harm to consumers, in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);
- (G) failing to disclose material facts associated with the purchase and use of the Defined Tires, such as but not limited to their susceptibility for tread separations, in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);
- (H) misrepresenting or implying a particular tire inflation pressure is safe and appropriate inflation for its Defined Tires when it is not safe and appropriate, in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);
- (I) misrepresenting the tire load capacity of its Defined Tires or by implying that the Defined Tires could carry a larger load than it actually could, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5) and (b)(27);
- (J) misrepresenting or implying that its Defined Tires were appropriate for highway use at maximum posted speed limits and maximum weight at expected driving conditions, when such was not the case, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(7) and (b)(27);
- (K) misrepresenting or implying the number of miles or number of years that its Defined Tires will be useful, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12), (b)(19) and (b)(27);
- (L) misrepresenting or implying that its Defined Tires were appropriate for use on a light truck or sport utility vehicle, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(12) and (b)(27);
- (M) misrepresenting or implying that its Radial ATX tires (a subset of the Defined

Tires) are “Our Best Tires”, when such is not the case, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(7) and (b)(27);

- (N) misrepresenting or implying the durability of its Wilderness AT (a subset of the Defined Tires) as “resistant to cuts, punctures and impact” when Defendant denied warranty claims on the tires for “consumer abuse” resulting from cuts and punctures and impact, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(7), (b)(12), (b)(19) and (b)(27);
- (O) misrepresenting the benefits of its Wilderness AT tire (a subset of the Defined Tires), including but not limited to “long, even wear” on certain sport utility vehicles, when such is not the case, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(7), and (b)(27);
- (P) misrepresenting the length of time its Defined Tires would last, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(7), (b)(12), (b)(19) and (b)(27);
- (Q) failing to comply with offered or implied warranties or guarantees on its Defined Tires, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(19), and (b)(27);
- (R) promoting a guarantee or warranty of a Defined Tire which under normal conditions is impractical to fulfill or which covers such a period of time or number of miles as to mislead consumers into the belief that the tires so guaranteed or warranted have a greater degree of serviceability or durability than is true in fact, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(7), (b)(12), (b)(19) and (b)(27);
- (S) making misrepresentations to consumers regarding the Defined Tires itself, through its company owned stores, or through its authorized dealerships during the voluntary recall and consumer satisfaction program involving the Defined Tires such as engaging in bait and switch, charging consumers for items promised or promoted as free of charge, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(19), (b)(21), (b)(22) and (b)(27);
- (T) using illustrations or statements which imply that certain Defined Tires are appropriate for use on certain sport utility vehicles, when such is not the case, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(7), (b)(12) and (b)(27);
- (U) replacing Defined Tires with tires of lower quality or lower mileage warranty, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(19) and (b)(27);
- (V) replacing Defined Tires with private label tires made by the Defendant when a consumer specifically requested a tire not made by the Defendant, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(19) and (b)(27);
- (W) making misleading statements in advertisements after the recall about the Defined Tires, in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);
- (X) advertising that the Defined Tires which are blemished, imperfect or which for any reason are defective without conspicuous disclosure of that fact, in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);
- (Y) using or employing a silent warranty to replace the Defined Tires, in violation of

Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);

- (Z) denying refunds and/or warranty replacements to consumers prior to the recall and after the recall for the Defined Tires that Defendant knew or should have known were defective, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(19) and (b)(27);
- (AA) failing to notify consumers in the United States about silent warranties or similar programs in foreign countries involving Defined Tires also sold in the United States, in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);
- (BB) promoting that Defendant is “expanding” its warranties during the Voluntary Recall involving Defined Tires, when such is not the case, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(7), (b)(19) and (b)(27);
- (CC) directing employees to merely replace the Defined Tires on the consumer’s vehicle and tell them the vibration problem arises from something other than the tires, in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);
- (DD) promoting or implying that Defendant will provide an expert with all the information needed to evaluate the problems with the Defined Tires and then failing to give the expert the documents and access to documents represented or implied to the public, in violation of Tenn. Code Ann. §§ 47-18-104(a), and (b)(27);
- (EE) representing that Defined Tires will last a certain length of time or number of miles, when Defendant does not have competent and reliable scientific evidence that such is the case, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(7), (b)(19) and (b)(27); and
- (FF) promoting that the Wilderness AT (a subset of the Defined Tires) was the “best” tire in a good, better, best comparison, when such is not the case, in violation of (Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(7) and (b)(27).

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE

PRAYS:

- (1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108 and 47-18-116.
- (2) That process issue and be served upon Defendant pursuant to Tenn. Code Ann. § 20-2-201, requiring it to appear and answer this Complaint.
- (3) That this Honorable Court adjudge and decree that Defendant has engaged in acts or practices in violation of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*, as previously set forth.
- (4) That this Court permanently enjoin and restrain the Defendant from engaging in

deceptive and unfair practices set forth herein and from violating the Tennessee Consumer Protection Act of 1977.

(5) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses (including statutory interest) suffered by reasons of the alleged violations of the Tennessee Consumer Protection Act.

(6) That the Court adjudge and decree that the Defendant is liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions, including attorneys' fees, as is provided by Tenn. Code Ann. § 47-18-108(b).

(7) That the Court adjudge and decree that the Defendant pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b).

(8) That all costs in this cause be taxed against Defendant.

(9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

FOR THE STATE OF TENNESSEE:

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